

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 16-079V

Filed: November 17, 2016

Unpublished

DELORES OLONOVICH,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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Damages Decision Based on Proffer;
Tetanus-diphtheria-acellular pertussis
("Tdap"); Shoulder Injury Related to
Vaccine Administration ("SIRVA");
Special Processing Unit ("SPU")

Maximillian J. Muller, Muller Brazil, LLP, Dresher, PA, for petitioner.

Darryl R. Wishard, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On January 14, 2016, Delores Olonovich ("petitioner") filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the "Vaccine Act" or "Program"). Petitioner alleged that as a result of receiving the tetanus-diphtheria-acellular pertussis ("Tdap") vaccine on February 20, 2015, she suffered a left shoulder injury. The case was assigned to the Special Processing Unit ("SPU") of the Office of Special Masters.

On February 29, 2016, the undersigned issued a ruling on entitlement, finding petitioner entitled to compensation for a shoulder injury related to vaccine administration ("SIRVA"). ECF No. 11. On November 17, 2016, respondent filed a proffer on award of compensation ("Proffer") indicating petitioner should be awarded \$95,000.00. ECF No. 27 at 2. In the Proffer, respondent represented that petitioner agrees with the proffered

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

award. *Id.* Based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **the undersigned awards petitioner a lump sum payment of \$95,000.00 in the form of a check payable to petitioner, Delores Olonovich.** This amount represents compensation for all damages that would be available under § 300aa-15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

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|---------------------|---|-----------------------------|
| DOLORES OLONOVICH, |) | |
| |) | |
| Petitioner, |) | No. 16-79V ECF |
| |) | |
| v. |) | Chief Special Master Dorsey |
| |) | |
| SECRETARY OF HEALTH |) | |
| AND HUMAN SERVICES, |) | |
| |) | |
| Respondent. |) | |

PROFFER ON AWARD OF COMPENSATION¹

I. Procedural History

On January 14, 2016, Dolores Olonovich (“petitioner”) filed a petition² for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34, *as amended*. She alleged that, as a result of receiving the tetanus-diphtheria-acellular pertussis (“Tdap”) vaccine on February 20, 2015, she suffered a left shoulder injury related to vaccine administration (“SIRVA”). Petition at 1-4.

On February 29, 2016, respondent filed her Vaccine Rule 4(c) report, conceding causation-in-fact for petitioner’s left SIRVA. On that same day, the Chief Special Master issued a ruling on entitlement, finding that petitioner was entitled to compensation for her left SIRVA.

¹ This Proffer does not include attorneys’ fees and costs, which the parties intend to discuss after the Damages Decision is issued.

² An amended petition was filed on August 16, 2016, seeking injuries in addition to a left SIRVA. However, based on a motion to strike filed by petitioner on November 17, 2016, the amended petition was stricken from the record. See Order (Document 26), filed November 17, 2016. Thus, the only vaccine injury now alleged by petitioner is a left SIRVA, as alleged in the initial petition. As such, respondent continues to concede a left SIRVA, as stated in her Vaccine Rule 4(c) report, filed February 29, 2016.

II. Items of Compensation

Based upon the evidence of record, respondent proffers that petitioner should be awarded \$95,000.00 for her left SIRVA. This amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

III. Form of the Award

Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment of \$95,000.00, in the form of a check payable to petitioner.³

Petitioner agrees.

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

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Acting Director
Torts Branch, Civil Division

CATHARINE E. REEVES
Acting Deputy Director
Torts Branch, Civil Division

MICHAEL P. MILMOE
Senior Trial Counsel
Torts Branch, Civil Division

³ Should petitioner die prior to entry of judgment, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering, and the parties reserve the right to move the Court for appropriate relief.

/s/Darryl R. Wishard

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Dated: November 17, 2016